IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 29 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF WEALTH TAX

Versus

PARWATIBAI TRUST

Appearance:

1. WEALTH TAX REFERENCE No. 29 of 1991
MRS MONA M BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 15/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this Reference at the instance of the revenue, the following questions have been referred for our opinion in respect of assessment year 1980-81:-

(i) Whether in law and on facts, the Appellate Tribunal is right in holding that the assessee trust is entitled to exemption under Section 5(1)(xxiii) of the Wealth Tax Act, 1957?

(ii) Whether in law and on facts, the Appellate Tribunal is right in directing the W.T.O. to allow deduction of Rs.7,43,270/- being the aggregate market value of the interest of the beneficiaries as also deduction of Rs.1,50,000/= from the bank balance as exempt u/s.5(1)(xxiii) of the I.T. Act, 1961 ?

2. The following question proposed by the revenue was not referred by the Tribunal and the revenue has not filed any reference application for the said question:-

"Whether in law and on facts, the Appellate Tribunal is right in holding that the assessee trust has to be treated as a specific trust and not a discretionary trust as held by the Wealth-tax Officer?"

3. The respondent-assessee is a trust created by late Girdharlal Amratlal by a deed of settlement dated 15.12.1934 for the benefit of his five daughters. Since question No.1 as proposed by the revenue is not referred by the Tribunal, we need not go into details of the facts regarding the nature of the trust and we proceed on the basis that the assessee-trust is a specific trust as already held by the Tribunal. The controversy is only about applicability of the provisions of Section 5(1)(xxiii) of the Wealth-tax Act, 1957 which at the relevant time read as under:-

"5(1) Subject to the provisions of sub-section (1A), wealth tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee -

....

(xxiii) any shares not being shares referred to in clause (xx) or clause (xxa) in any Indian

company where the assessee is an individual or a Hindu undivided family;"

For the purposes of the present controversy, clauses (xx) and (xxa) are not relevant but the only controversy is whether the trust can claim benefit of the exemption granted by the aforesaid clause.

The Assessing Officer as well as the Commissioner of Wealth-tax (Appeals) denied the exemption under the aforesaid clause on the ground that the assessee being a trust, it is not an individual or a Hindu undivided family and, therefore, not entitled to claim the exemption under the above clause.

The Tribunal relied on various decisions of the different Benches of the Income-tax Appellate Tribunal for coming to the conclusion that trustees are also entitled to claim the exemption under the above clause because trustees are required to be treated as individuals.

4. We have heard Mrs Mona Bhatt, learned Standing Counsel for the revenue. Though served, none appears for the respondent-assessee..

5. Mrs Bhatt, learned Standing Counsel for the revenue has submitted that in view of the clear language of the clause, only individuals and Hindu undivided families are entitled to claim the exemption in a trust. The trust being neither an individual nor a Hindu undivided family cannot claim the exemption under the above clause. Mrs Bhatt has, however, been fair in pointing out that the Rajasthan High Court in CWT vs. Bhangur Charitable Trust, 164 ITR 249 has dealt with this controversy.

6. It is necessary to refer to the Scheme of the Wealth Tax Act, 1957 (hereinafter referred to as "the Act"). The charging section i.e. Section 3 provides that there shall be charged for every assessment year wealth tax in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and Company at the rate or rates specified in Schedule I. The wealth tax is, therefore, to be levied only from three categories of assessees individuals, Hindu undivided families and Companies.
Section 21-A of the Act provides that notwithstanding anything contained in Section 5(i), where any property is held under trust for any public purpose of a charitable or religious nature in India and any one

of the three conditions stipulated in the said section are satisfied, wealth tax shall be leviable upon, and recoverable from, the trustee in the like manner and to the same extent as if the property were held by an individual who is a citizen of India and resident in India for the purposes of this Act. It is, thus, clear that the trustees of a public charitable trust are liable to pay wealth tax in the same manner and to the same extent as if the property were held by an individual.

7. When clause (xxiii) of Section 5(1) is read in the aforesaid background, it is clear that only Companies are not covered by the exemption and the other two categories of assessees are entitled to claim the exemption. When the trustees are subjected to the levy of wealth tax as if the trust property is held by trustees as individuals, the revenue cannot deny exemption to the trust or the trustees on the ground that they are not individuals.

8. A Division Bench of the Rajasthan High Court in CWT vs. Bhangur Charitable Trust (supra) has elaborately discussed the aforesaid aspect and after referring to the decision of the Hon'ble Supreme Court in Trustees of Gordhandas Govindram Family Charity Trust vs. CIT, 88 ITR 47, and the decision of the Bombay High Court in Abhay L Khatau vs. CWT, 57 ITR 202 and of the Calcutta High Court in Suhasini Karuri vs. WTO, 46 ITR 953, the Rajasthan High Court has held that the exemption laid down under Section 5(1)(xxiii) of the Act is available to a trust in respect of shares held by the trustees.

9. We respectfully agree with the view of the Rajasthan High Court in CWT vs. Bhangur Charitable Trust (supra) and accordingly we answer both the questions referred to us in the affirmative i.e. in favour of the assessee and against the revenue.

10. The Reference accordingly stands disposed of.

(M.S. SHAH, J.)

(A.M. KAPADIA, J.)
zgs/-